

AMENDED IN SENATE APRIL 28, 2003

**SENATE BILL**

**No. 458**

**Introduced by Senator Burton**

February 20, 2003

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An act to amend Section 945.5 of the Civil Code, relating to construction defects.

LEGISLATIVE COUNSEL'S DIGEST

SB 458, as amended, Burton. Construction defects: affirmative defenses.

Existing law regulates actions seeking recovery on construction defects, as specified, on original construction intended to be sold as an individual dwelling unit. Existing law provides that a builder, under the principles of comparative fault, may be excused from any obligation, damage, loss, or liability if the builder can demonstrate specified affirmative defenses in response to a claimed violation. *Existing law extends the rights and duties described above to subcontractors, materials suppliers, individual product manufacturers, or design professionals, as specified.*

This bill would ~~extend~~ *make a technical change by specifying that the provisions relating to comparative fault, described above, apply to a subcontractor, material supplier, individual product manufacturer, or design professional.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 ~~SECTION 1.—Section 945.5 of the Civil Code is amended to~~  
2

1     SECTION 1.   Section 945.5 of the Civil Code is amended to  
2     read:

3     945.5.   A builder or any other party who is subject to this title  
4     pursuant to Section 936, under the principles of comparative fault  
5     pertaining to affirmative defenses, may be excused, in whole or in  
6     part, from any obligation, damage, loss, or liability if the ~~builder~~  
7     party can demonstrate any of the following affirmative defenses  
8     in response to a claimed violation:

9     (a) To the extent it is caused by an unforeseen act of nature  
10    which caused the structure not to meet the standard. For purposes  
11    of this section an “unforeseen act of nature” means a weather  
12    condition, earthquake, or manmade event such as war, terrorism,  
13    or vandalism, in excess of the design criteria expressed by the  
14    applicable building codes, regulations, and ordinances in effect at  
15    the time of original construction.

16   (b) To the extent it is caused by a homeowner’s unreasonable  
17   failure to minimize or prevent those damages in a timely manner,  
18   including the failure of the homeowner to allow reasonable and  
19   timely access for inspections and repairs under this title. This  
20   includes the failure to give timely notice to the builder after  
21   discovery of a violation, but does not include damages due to the  
22   untimely or inadequate response of a builder to the homeowner’s  
23   claim.

24   (c) To the extent it is caused by the homeowner or his or her  
25   agent, employee, subcontractor, independent contractor, or  
26   consultant by virtue of their failure to follow the builder’s or  
27   manufacturer’s recommendations, or commonly accepted  
28   homeowner maintenance obligations. In order to rely upon this  
29   defense as it relates to a builder’s recommended maintenance  
30   schedule, the builder shall show that the homeowner had written  
31   notice of these schedules and recommendations and that the  
32   recommendations and schedules were reasonable at the time they  
33   were issued.

34   (d) To the extent it is caused by the homeowner or his or her  
35   agent’s or an independent third party’s alterations, ordinary wear  
36   and tear, misuse, abuse, or neglect, or by the structure’s use for  
37   something other than its intended purpose.

38   (e) To the extent that the time period for filing actions bars the  
39   claimed violation.

1 (f) As to a particular violation for which the builder has  
2 obtained a valid release.

3 (g) To the extent that the builder's repair was successful in  
4 correcting the particular violation of the applicable standard.

5 (h) As to any causes of action to which this statute does not  
6 apply, all applicable affirmative defenses are preserved.

7 read:

8 945.5.— A builder, subcontractor, material supplier, individual  
9 product manufacturer, or design professional, under the principles  
10 of comparative fault pertaining to affirmative defenses, may be  
11 excused, in whole or in part, from any obligation, damage, loss, or  
12 liability if the party can demonstrate any of the following  
13 affirmative defenses in response to a claimed violation:

14 (a) To the extent it is caused by an unforeseen act of nature  
15 which caused the structure not to meet the standard. For purposes  
16 of this section an “unforeseen act of nature” means a weather  
17 condition, earthquake, or manmade event such as war, terrorism,  
18 or vandalism, in excess of the design criteria expressed by the  
19 applicable building codes, regulations, and ordinances in effect at  
20 the time of original construction.

21 (b) To the extent it is caused by a homeowner's unreasonable  
22 failure to minimize or prevent those damages in a timely manner,  
23 including the failure of the homeowner to allow reasonable and  
24 timely access for inspections and repairs under this title. This  
25 includes the failure to give timely notice to the applicable party  
26 after discovery of a violation, but does not include damages due  
27 to the untimely or inadequate response of a builder to the  
28 homeowner's claim.

29 (c) To the extent it is caused by the homeowner or his or her  
30 agent, employee, subcontractor, independent contractor, or  
31 consultant by virtue of their failure to follow the recommendations  
32 of the builder, manufacturer, or any other applicable party, or to  
33 follow commonly accepted homeowner maintenance obligations.  
34 In order to rely upon this defense as it relates to a builder's  
35 recommended maintenance schedule, the builder shall show that  
36 the homeowner had written notice of these schedules and  
37 recommendations and that the recommendations and schedules  
38 were reasonable at the time they were issued.

39 (d) To the extent it is caused by the homeowner or his or her  
40 agent's or an independent third party's alterations, ordinary wear

- 1 and tear, misuse, abuse, or neglect, or by the structure's use for  
2 something other than its intended purpose.  
3 (e) ~~To the extent that the time period for filing actions bars the~~  
4 ~~claimed violation.~~  
5 (f) ~~As to a particular violation for which the applicable party~~  
6 ~~has obtained a valid release.~~  
7 (g) ~~To the extent that the repair was successful in correcting the~~  
8 ~~particular violation of the applicable standard.~~  
9 (h) ~~As to any causes of action to which this statute does not~~  
10 ~~apply, all applicable affirmative defenses are preserved.~~

